

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

PETITIONER'S BRIEF

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

7983

No. 20998

L. J. H. HERWIG

Petitioner

VS.

PEOPLES SUPPLY, INC.

Respondent

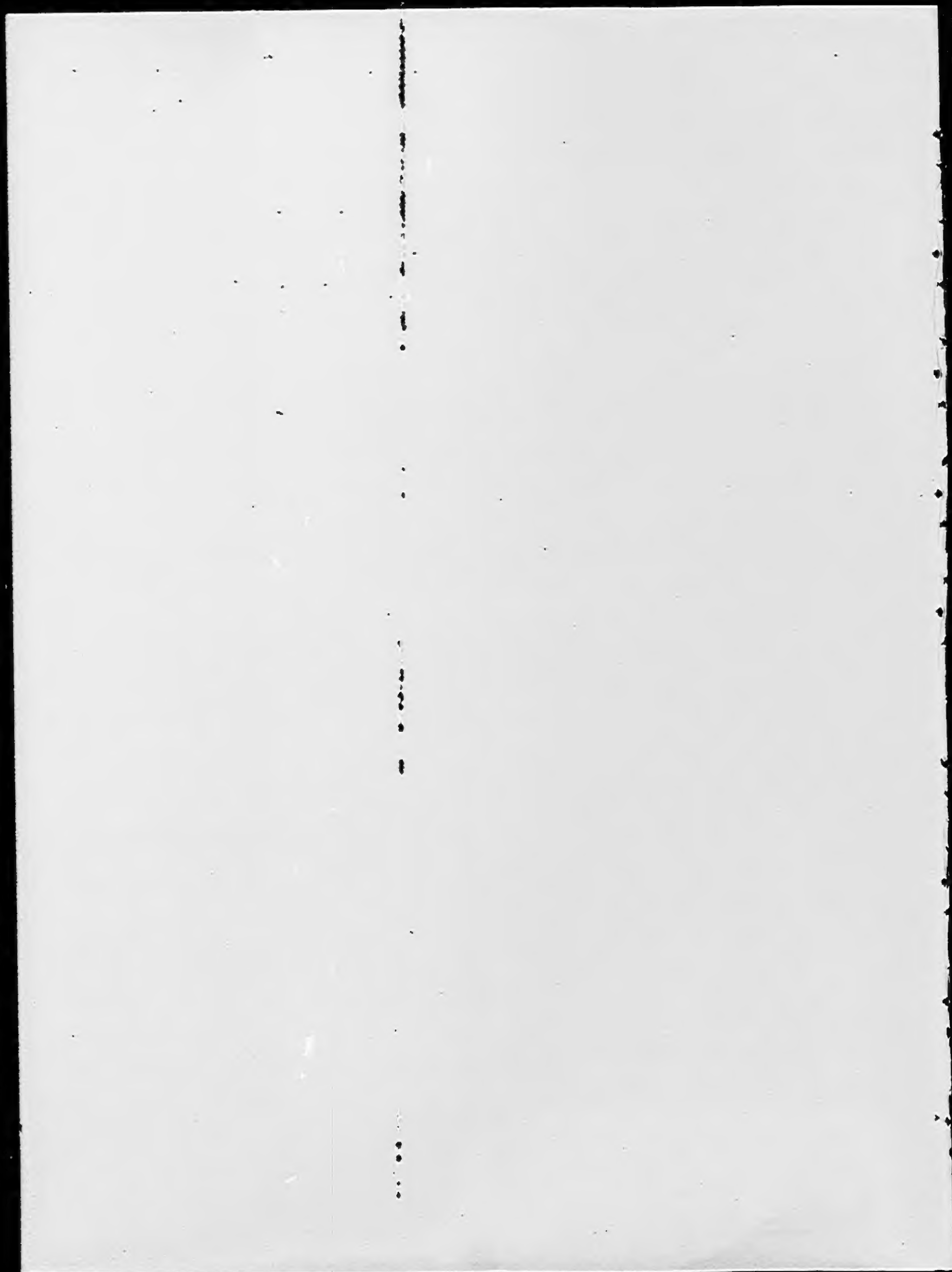
APPEAL FROM THE JUDGMENT OF THE DISTRICT OF
COLUMBIA COURT OF APPEALS

United States Court of Appeals
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FILED JUN 30 1967

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Questions Presented

1. Whether a contract or claim which violates the statutory imposition of usurious interest without a license is enforceable?
2. Whether a seven days late filing of an answer and counterclaim thereto due to excuseable neglect constitutes a default judgment?
3. Whether the respondent imposed upon the Trial Court's credulity?

Statement of the Case

Petitioner's grazing, corn and hay crops were destroyed by a 3-year drought. The State and Federal Government declared his farm to be in the Disaster Area. He bought hay only from Respondent--not grain as erroneously stated. Respondent, a West Virginia corporation, insisted on demanding usurious interest for these purchases without a license, in violation of the West Virginia, Virginia, and District of Columbia statutes. Petitioner maintains Respondent's claim is consequently void and unenforceable.

Argument

1. Court Rules 60(1), (3), and (4), interpose relief from void and illegal judgments.
2. Respondent, in demanding and receiving usurious interest payments from Petitioner without a license, violates Sections 4653(1), 4627(5), 4628(6), and 4632, of the West Virginia Code. Similarly, the Virginia and the District of Columbia Codes; the latter being the Lex Fori.
3. Respondent's claim herein is illegal and invalid. It imposes usurious interest charges without a license. Judge Danaher, in Indian Lakes, 350 F. 2d 435.
4. For good cause shown, a Default Judgment should be set aside. Rule 55(c).
5. In the interest of justice, Default Judgments should be vacated. *Banville v. Sullivan*, 11 App. D.C. 23.

6. Sufficiency of Default Judgment presents viable issues. Meakin v. Martin, 187 A. 2d 326; Holden v. Peters, 116 A. 2d 155.

7. Under West Virginia statutes, Respondent's attorney, not being a corporate officer, had no authority to execute the Verification to the Complaint whereby the Default Judgment was obtained by him. (Rule 11.)

8. Respondent was guilty of illegal procedure in obtaining the Default Judgment, there being no Verification to the Complaint. It was not until almost a year later, on February 23, 1966, when Respondent's attorney executed the Affidavit of Verification in violation of the laws of West Virginia, supra; also Rule 11.

9. No authorized corporate officer signed or executed any of the pleadings on behalf of said corporation. West Virginia Code, supra; Rules 84 and 11.

10. Respondent corporation is in Pari Delicto in its procedural violations as pointed out, supra. Alvarado v. Rosenberg, 50 A. 2d 269.

11. The Motions Court, Judge Howard in D. C. Court of General Sessions, based his ruling in denying Defendant Petitioner's motion upon a misconception of the facts, stating unfounded facts, quote, "Plaintiff is not charging the Defendant (Petitioner) with interest except upon the Judgment." Respondent imposed upon Judge Howard's credulity by its silence.

12. The second Judge of said Court (Judge Greene), disregarded obvious errors, supra, pointed out in the Motions before him relating to Plaintiff's (Respondent's) Motion for Judgment on the Pleadings.

13. The second Judge (Greene) followed and adhered to the ruling of the first Judge (Howard) in disregard of the admonition in Indian Lakes, supra, citing Judge Hand in Dictograph Products Co., Inc. v. Sonotone Corp., 230 F. 2d 131, holding the rights of the suitor should have preferential consideration.

14. Respondent cites no law other than Judge Howard's ruling based on an erroneous conception of the facts adhered to by the second Judge (Greene). Petitioner's case is supported by numerous citations from well established authorities.

15. The record of the two Motions Courts of D. C. General Sessions supports the record that Judge Howard's credulity was imposed upon by Respondent.

16. The ruling of the D. C. Court of Appeals "that the Trial Court should fix the amount of recovery to which Respondent is entitled and include the same in the final judgment awarded" should be reversed.

17. The misconceptions shown herein by the Motions' Judges, the misstatements of obvious facts in the pleadings, the possible exposure to untenable judicial sensibilities are just and reasonable ground for a hearing upon the merits rather than making a permanent memorial of facts which are patently unprovable.

WHEREFORE, Petitioner respectfully prays that the D. C. Court of Appeals be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE: Copy hereof mailed, postage prepaid, this _____
day of June, 1967, to M. H. Harrison, Esq., 1750 Pennsylvania Ave.,
N. W., Washington, D. C., attorney for Respondent.

L. J. H. Herwig, Pro Se.